Filed 6/29/10 P. v. Abdullah CA5

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. RAMADAN ABDUR-RAUF ABDULLAH, Defendant and Appellant.	F056443 (Super. Ct. No. F02676299-1) **OPINION**

APPEAL from a judgment of the Superior Court of Fresno County. Ralph Nunez, Judge.

Kyle Gee, under appointment by the Court of appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, William K. Kim and Kathleen A. McKenna, Deputy Attorneys General, for Plaintiff and Respondent.

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On August 21, 2001, Fresno County Sheriff's personnel responding to a possible burglary in the Dunlap area came under fire from appellant Ramadan Abdur-Rauf Abdullah. Deputy Erik Telen was killed by a shotgun blast to the face. In this appeal from his ensuing conviction on multiple charges, appellant does not dispute that he fired the fatal shot, but instead challenges certain of the trial court's rulings with respect to the admission of evidence concerning appellant's mental state at the time. For the reasons that follow, we will affirm.

PROCEDURAL HISTORY

Count 1 of the second amended information charged appellant with murder of a peace officer engaged in the performance of his duties, in the commission of which appellant personally used a firearm, and personally and intentionally discharged a firearm, proximately causing death. (Pen. Code,[1] §§ 187, subd. (a), 190, subd. (c)(4), 12022.53, subd. (d).) Peace-officer-killing, lying-in-wait, and burglary-felony-murder special circumstances were also alleged. (§ 190.2, subd. (a)(7), (15) & (17).) Counts 2-4 charged appellant with assault with a firearm on a peace officer, in the commission of which appellant used, and personally and intentionally discharged, a firearm. (§§ 245, subd. (d)(1), 12022.5, subd. (a), 12022.53, subd. (c).) Appellant pleaded not guilty and not guilty by reason of insanity (NGI). The People sought the death penalty.

A doubt was declared as to appellant's competency (§ 1368) and criminal proceedings were suspended on April 12, 2004.[2] Appellant subsequently was found incompetent and committed to the state hospital. On January 13, 2005, following certification that he was competent, criminal proceedings were reinstated. On August 11,

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[1] All statutory references are to the Penal Code unless otherwise stated.

[2] Criminal proceedings were also suspended and reinstated in 2002, prior to the preliminary hearing.

2005, criminal proceedings were again suspended pursuant to section 1368. On August 25, 2005, appellant was found to be competent and criminal proceedings were reinstated.

Jury trial began on September 5, 2006. During jury selection, a doubt was declared as to appellant's competency and proceedings were suspended pending psychiatric evaluation. On September 26, appellant was found incompetent to stand trial and the panel of prospective jurors was discharged. On July 13, 2007, following certification that he was competent, criminal proceedings were reinstated.

Jury trial began anew on March 3, 2008. On April 29, the jury announced that it was deadlocked with respect to guilt on all counts due to "fundamental differences in the belief regarding the 'state of mind.'" A mistrial was declared.

On September 10, 2008, the parties entered into an agreement whereby appellant withdrew his NGI plea; the People withdrew their request for the death penalty; both sides waived their right to a jury trial; and the matter was submitted to Judge Nunez, who presided over the earlier jury trial, on the transcript of that trial. On September 19, the court found appellant guilty on all charges, and found all special circumstances and allegations to be true. Appellant's motion to strike the special circumstance findings was denied, and he was sentenced to life in prison without the possibility of parole plus 25 years to life plus 43 years 4 months. He filed a timely notice of appeal.

FACTS

I

PEOPLE'S CASE-IN-CHIEF

On August 21, 2001, Robert Gregory and his wife resided near Old Oak and East Kings Canyon Roads in Dunlap. Their daughter, Kathleen Reed, lived on adjoining property. Gregory had a number of firearms in the house. His 12-gauge shotgun was kept unloaded in a gun safe in the middle bedroom. Also kept in the safe was a .357 magnum six-shot revolver. Ammunition for the guns was kept in and on top of the gun safe.

Gregory and his wife left home about 10:00 a.m. Their Mitsubishi was left parked on the southeast side of the residence, and the gun safe was left unlocked. The house was locked, as were most of the windows. The window leading to the room in which a piano and desk were located was left cracked for ventilation, but it had a screen on it.

Robert Champlin and his wife, Rachel, lived east of the Gregorys, between Old Oak and Dunlap Roads. On Tuesday, August 21, they left about 9:00 a.m. and returned about 4:00 p.m. After putting the car in the garage, Champlin went to feed his cats. When the cats would not approach food placed on a platform by the tree house out back, Champlin figured there was an animal in the tree house. He banged on it with a stick, and something moved. Appellant then came out of the tree house. He had to have been crouching or lying down, or Champlin would have seen him.

Appellant, who was holding his side, said he was hurt and asked if Champlin could help him. When Champlin asked what was wrong with him, appellant said he was just hurt. He said he needed to use the bathroom, and Champlin told him to go over around the bushes. Appellant said he would like something to eat, and Champlin said he would get something, but that appellant should go over by the gate to the driveway. Appellant then asked Champlin for a ride to the bus station. Champlin refused. Champlin told him to go to the gate and Champlin would talk to him there. Champlin pointed toward the gate. During this conversation, appellant kept walking closer to Champlin. He did not appear fearful.

When appellant kept getting closer, Champlin ran into the house and locked the door. Frightened, he grabbed a loaded pistol from the bedroom. When he came into the living room holding his revolver, he saw appellant walk past the window toward the front door. Mrs. Champlin heard someone trying to open the front door. Champlin yelled at appellant to go to the gate and that he would talk to him there.

Through the window, Champlin saw appellant go down Old Oak Road in the opposite direction from Highway 180. Appellant left Champlin's view for a few minutes,

then returned and went over the gate or the fence to the Gregorys' property. Mrs. Champlin then telephoned the sheriff's department. They arrived within 10 or 15 minutes.[3]

Deputies Stalker and Telen, who were working a fire in the area, responded. After talking to the Champlins, they walked up the Gregorys' driveway to the house, which was around a quarter of a mile from the gate. When they neared the house, they were able to see that the screen on one window was bent down. Believing someone had climbed in through the window, they walked around the entire house to see if anything else looked suspicious. They were able to gain access to what appeared to be a covered porch that had been converted into an office, but the door from that room into the main residence was locked. At that point, they decided to check the rest of the property and the neighbor's property. They requested assistance from the helicopter unit, and Forest Service Agent Launer and Deputy Robnett also arrived to assist.

Because of the vehicle parked in the driveway, Stalker and Telen did not know if anybody was home, and felt they could not just walk away from the situation. Stalker decided to return to the Champlins to see if they could provide any information about who owned the house and who might have a key. Kathleen Reed was contacted; she knew where there was a spare key, and met Stalker at the Champlins' house. She and Stalker then proceeded up the driveway to the Gregory residence. As they neared the house, Stalker called Reed's attention to a screen that had been pulled back from a window. She told him it was not normally that way, then retrieved a house key from the patio and gave it to him.

The deputies unlocked the door to the kitchen. Stalker opened the door and loudly stated their identity more than once. There was no response. He and Telen then entered

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3 According to the dispatch log, appellant was reported climbing a fence onto the Gregorys' property at 5:12 p.m.

the kitchen with their guns drawn. They moved slowly through the narrow room, then stopped in front of the entryway, where they could see there were rooms to the right. Stalker took up a position next to the stove, and Telen signaled that he was going to move ahead. Telen, who was crouched down, moved slowly around the corner. He had taken one or two steps when Stalker heard a loud bang. Something flew into Stalker's face, and it took him a couple of seconds to realize he had heard a gunshot and been hit by debris from the wall. He did not know what had happened to Telen, and started yelling at him to get out as he himself exited the house. Robnett joined him right outside the door, and Stalker put out a radio transmission of shots fired. At that point, he turned around, but Telen was not there. Stalker went back to the entryway and saw him lying on the ground, not moving. Stalker yelled at him, but there was no response. Stalker did not know where the shot had come from or where the suspect was. He and Robnett then each fired a cover shot over Telen to keep the suspect from getting near him. Robnett wanted to go in and get Telen, but Stalker could see a large amount of blood flowing from Telen's head and knew he was dead. He instructed Robnett to stay and cover Telen, then Stalker moved to the north corner of the house to make sure that side of the house was covered. He remained in that location until the helicopter arrived.

Sergeant Rascon and Deputy Lail were assigned to the sheriff's department helicopter that day, and headed to the Dunlap area in response to a call of a suspicious person in the vicinity. They were in radio contact with Stalker and Telen. Once in the area, they flew at an altitude of 500 to 700 feet. Their engine was loud enough that it could be heard by someone on the ground. They searched the area for 10 to 20 minutes, then left to refuel at the Fresno Air Terminal. During the refueling process, Rascon heard Stalker's radio broadcast of shots fired and an officer down.[4] He and Lail immediately

[4] According to the dispatch log, the helicopter reported being on scene at 5:55 p.m. and leaving to refuel at 6:13 p.m. The report of shots fired and an officer down was made at 6:48 p.m.

headed back to the location and arrived in about 15 minutes. Because they were the first ones to arrive other than Stalker, Robnett, and Launer, they flew low over the house and Rascon started directing responding units to the location. After about three or four minutes, Lail landed the helicopter 75 to 100 yards from the house.

Sheriff's Lieutenant Hollis arrived on scene at approximately 7:14 p.m. Stalker had taken up a position to try to prevent an escape from the house. Rascon and Lail were approaching the home in order to extricate Telen. They made their way to the open back (kitchen) door, where Robnett was kneeling. They could see Telen lying facedown, with his head at the far end of the room. Rascon announced their identity and told whoever was inside to come out. There was no response. Rascon then announced that they were coming in for their man. Again, there was no response or any sound of movement. Lail then crawled inside the kitchen and Rascon entered behind him, with Robnett covering them.

Lail grabbed Telen's shoulders, while Rascon grabbed his leg. As they started to pull, Rascon heard noise behind the wall that separated the kitchen from the room beyond, then a pop that he recognized as the discharge of a firearm, probably a handgun. He saw something come off the wall, and he and Lail began firing at the wall. Telen's body began to move as Robnett grabbed hold and pulled, and they were able to drag Telen, who was bleeding, to the back porch area. Rascon then fired inside again, to cover Lail while he came out.

Hollis and a number of other deputies had arrived along a fence line when he heard multiple gunshots coming from inside the house. At approximately 7:16 p.m., Rascon advised Hollis by radio that he and Lail had successfully gotten Telen out of the kitchen area and had taken cover behind the Mitsubishi. By this time, other deputies were present, and Rascon instructed those with shotguns to fire on particular windows in the house as he and a California Highway Patrol (CHP) officer moved Telen down the

driveway to a waiting patrol car. Rascon did not notice any gunfire coming from within the residence at this time.

Rascon and the CHP officer met up with Hollis and other deputies about 40 yards down the driveway. Hollis heard at least one shot fired from inside the house, and deputies laid down a covering fire and shot into the house. They were able to get Telen down a hill and into a patrol car, and officers drove him to medical aid waiting on the main road. Despite their efforts, Telen died from perforations of the brain due to shotgun injuries to the head. Most of the shotgun wounds were to the right side of his face and forehead. While most of the pellets directly struck his face, there was evidence that some may have gone through a wall or other intermediate target.

Stalker and some of the others in position around the house were individually evacuated to less vulnerable positions. During the first two extractions, there was more gunfire from inside the house. Hollis believed he heard two different types of weapons being fired inside the residence, and that one was a handgun. He could not tell in which direction the gunfire was going. He did not clearly see any bullets come out of the house, nor did he become aware of any striking near him or his deputies. Hollis heard no additional gunshots from the home during the remaining extractions.

SWAT teams set up a perimeter around the house. About 9:30 p.m., Sergeant Morgan, the SWAT supervisor, started hearing movement inside the house. About 10:00 p.m., he heard glass breaking, and surmised a window was being broken. For the next two and a half hours or so, Morgan continued to hear intermittent noise inside the house, including movement and more glass breaking.

Shortly after midnight on August 22, SWAT members heard a noise from inside the house. Deputy Rivera heard a subject say hello. It sounded like the voice was coming from deep inside the residence. Deputy Severson heard a voice say something like, "Can you hear me?" At that point, Rivera announced who they were and ordered the person to come out with his hands in the air. The person said he was coming out.

Appellant finally exited the residence and was taken in to custody at 12:30 a.m. As he was being taken in to custody, he complied with every order he was given. When SWAT team members asked if there were any other people in the house or if appellant had any guns or weapons, appellant said there was nobody else in the house and that he did not have anything. When asked if he was injured, appellant said no, but that he was sick. He did not explain what he meant.

The SWAT team entered the house to clear it. Telen's service pistol was in the kitchen. It had not been fired. There was a gun safe in the northeast bedroom. The box springs and mattress from the bed in that room were standing on their sides on edge, and offered concealment from anyone outside the window. A number of firearms and an assortment of ammunition were found on the floor and elsewhere in the room. Also on the floor was a large knife.

A steel, freestanding wood stove stood in one corner of the living room. It offered good protective cover and a good view of anyone entering the residence. A 12-gauge pump shotgun, two expended shotgun casings (one of which was the double-aught buckshot magnum round that killed Telen), and a live double-aught buckshot round were found on the ground on the west side of the stove. A box for, and unexpended rounds of, .357-caliber ammunition were found in the area of the stove, as were five expended .357 casings. A .357 revolver bearing appellant's fingerprint was found on the floor of a closet in the living room. It was determined that, in addition to the two shotgun rounds, appellant fired at least six rounds from the .357 from the corner behind the wood stove, and nine rounds from the .357 altogether. As the revolver, which was found with the hammer pulled back, held six rounds total and three live rounds were chambered, it could not have fired all nine rounds without being reloaded. Appellant's shoes were found in front of the stove. A blanket and a pillow were found near the center of the living room. Open food and drink items were found in various locations in the house. As far as Robert

Gregory could tell, no valuables were missing. The spare key to the Mitsubishi was still hanging in its usual spot on the wall near the kitchen entryway.

Detectives Toscano and Amador began to interview appellant and process him for evidence at the command post around 1:00 a.m. Appellant gave his name, birth date and age, and an address in Binghamton, New York, complete with zip code. He was quiet and followed orders. He was a little hesitant when asked to remove his pants and underwear in the presence of a female crime scene technician, and he commented that it was against his religion, but he complied with the request. When asked if he had relatives nearby, he mentioned a cousin in Culver City, then later gave a sister's name. He said he was unemployed, but used to work for a company in Michigan. He was able to give the company's name and address. When asked if he was sick or taking medication, appellant said he was, but for an unknown illness. He gave his doctor's name as Al Sheikh Sayeed Nubarkali Jilani, and said he was in Pakistan. During the approximately 30 minutes Toscano was with appellant, appellant made no bizarre statements and said nothing about delusions, and seemed to understand and be responsive to the questions.

At the conclusion of the processing, appellant was transported to University Medical Center to have blood drawn, and then to sheriff's headquarters for an interview. While at the hospital, appellant complied with all requests and did not make any unusual statements. Appellant's blood tested positive for both the active component of marijuana (THC) and its inactive metabolite. The fact THC was present indicated usage within roughly the previous six hours, plus or minus two hours, if the marijuana was smoked. If it was eaten, ingestion could have been earlier. Marijuana is not a stimulant and tends to have a calming effect. With the quantity involved in this case, hallucinations would not be expected, at least in a person who was not mentally ill.

The interview at sheriff's headquarters began shortly after 3:00 a.m.[5] In the interview, appellant was asked if he knew why he was there. He said no, that something happened. After a number of questions that appellant did not answer, appellant said he did not know what happened.[6] He did not remember stopping by a house and asking for food. When asked what he remembered, he said he did not know, and that all he knew was that he was sick. When asked what he was sick from, he said he did not know. He said he was under a doctor's care, but did not know for what. Appellant did not know where the doctor – Jilani – was, but his book was from Pakistan. Appellant had not met him in person. Appellant said he had a cousin from "Colouver," and also had family members at the university in Miramonte. They were related by faith. The university was the International Quranic Open University, where appellant had been staying, but he did not know for how long or the telephone number. Appellant did not know why he shot at the officers. He was not mad. He did not answer when asked why he broke into the house. Appellant related that he had not been working since he began receiving his treatment, which was about the second week in July. He was receiving Quranic psychiatry or Quranic therapy, from the Open Quranic University. He did not really know what type of treatment, but he had to take medication. When asked what kind, he said that he had to listen to the audio tapes the doctor ordered. He only took the verses from Holy Quran, along with chapters for praises asking for blessings on the descendents of the Prophet. He also had to take the water that went along with the tapes.

Appellant said he was last at the university on Monday, August 20. He did not know what he did on August 21. He left the university compound Monday morning by himself and walked down the hill. He did not know where he spent Monday night. He

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5 A videotape of the interview was played for the jury.

6 There were a number of times when appellant simply remained silent when asked something.

did not have any guns with him. He did not know where he got the guns. He did not answer when asked if he disliked police officers or if he had had problems with them before. He denied being antigovernment and said he did not want to take people's lives, but did not answer when asked why he would kill a police officer or whether he knew it was a police officer. Appellant later said again that he felt sick, and that it hurt when he did not have his medicine. When asked why it hurt him, he responded that he had bad dreams, and that he last took his medication the night before he left the university.

II

DEFENSE'S CASE

Appellant was born to Mahdi and Yasmeen Abdullah in Brooklyn, New York, in 1981. Appellant's father and paternal grandfather were both law enforcement officers. Appellant's father occasionally took appellant hunting and taught him firearm safety.

Appellant's father followed the Islamic religion. He explained that a sheikh is a learned individual whose responsibilities include being a spiritual leader. Islamberg is a New York community of people practicing the Muslim faith together. Sheikh Jilani, a direct descendant of the Prophet, is the owner and spiritual leader of Islamberg.

There were retreats at Islamberg, in which men or women from different parts of the United States would come to study religion. In late June or early July 2001, appellant's father received a telephone call, telling him that something had happened at the retreat and that he needed to get there as quickly as possible. When he arrived, he was told that appellant was saying he was Jesus, the son of Mary. Appellant's father found appellant standing in a field with his hands over his stomach. When appellant's father asked what was going on, appellant replied that he was Isa ibn Mariyam, which means Jesus, the son of Mary, in Arabic. Appellant said he was in charge and that everybody had to listen to him and had to stop playing. He said it was time for them to prepare themselves for the last days.

When appellant's father was unable to convince appellant that what appellant said was not going to happen, they went to see the elder of the property, Kahlifa Jamil. Kahlifa Jamil asked appellant what was going on; when appellant insisted that he was Isa ibn Mariyam, Kahlifa Jamil asked who was sitting next to him, referring to appellant's father. Appellant replied that it was Ramadan's father. Appellant's father had never seen appellant in such a state before. He thought appellant was possessed by some type of spirit or djin, and that appellant's problem was more spiritual than physical.[7]

Kahlifa Jamil told appellant's father to take appellant home. Appellant's father asked if there was any kind of Quranic therapy that could be done.[8] Another elder, Kahlifa Khalid, gave appellant's father a clear pitcher of water over which several of the Kahlifas had prayed, the Dalla Karat (a cassette tape of prayers and verses from the Quran), and set of headphones. He said appellant had to drink from the water and wash his face with it, and should listen to the tape several times a day for about 45 minutes at a time, and that no one could use the headset other than appellant.

Appellant's father took appellant back to the Binghamton apartment in which appellant lived with his sister, Hamidah. On the way, appellant asked what was wrong with him and why he was feeling so weird. Once back in the apartment, appellant was different. He would stick his spoon into his food, but then just stop for a long period of time. Once he put the food in his mouth, he would wait. Or, he would be walking from one room to the next and would just stop and stand there. Appellant's father would call

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[7] Appellant's father explained that djins are beings that exist but cannot be seen. In the Islamic view, there are human and nonhuman djins, and good and bad djins.

[8] Quranic therapy is the application of verses from the Quran, and prayers that have been brought down through the years from different saints, in order to heal spiritual issues.

appellant's name, but it was like appellant was not even there.[9] After a few days, appellant began to get better, although he was not his usual self.

Appellant obtained permission from Kahlifa Khalid to return to Islamberg. He took the bus there a day or two before his birthday, which was July 9. Seemingly almost the next day, his father got another telephone call that there was a problem. Upon arrival, he found appellant lying on the floor in a room in the community center. Appellant's clothing was damp, and he looked as though he had been crying. He was limp and exhausted. When appellant's father put his arms around him, appellant began to weep. Appellant's father took him first to the house of appellant's older sister, then to the father's house. While in the car on the way, appellant lay against the door, sobbing. When Haqiah, appellant's sister, tried to talk to him, appellant was unresponsive.[10] That evening, appellant was able to say prayers with his father, although appellant was still not right. Appellant's stepmother suggested taking appellant to the crisis center, where appellant could be evaluated by mental health professionals in a safe environment. Appellant's father wanted to give the Quranic therapy a chance.

Sometime after returning from Islamberg the second time, appellant got into an argument with his stepbrother over what to watch on television. Appellant's father sent them both to bed. When he awoke early the next morning, appellant was gone. After several days, appellant telephoned his father and said he was in Fresno, having taken the

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9 Once, Hamidah asked appellant what was going on. Appellant kept repeating that he was just hearing and obeying. He had a blank stare. When Hamidah asked what he was doing, he responded that after morning prayers, he had been walking with one of his friends and his friend just disappeared.

10 Around this same general time period, appellant would visit Haqiah's house and sometimes cover up her television or remove her picture magnets from the refrigerator, and tell her it was so spirits would not jump out of the things. On one occasion when he and Haqiah were at the mall, appellant did not want to touch some lady's hand, because he said she had bad spirits with her and if he touched her, her spirits would jump into him.

bus. He said he was sick and had to get some help and to get his Quranic therapy, and that there was a Quranic doctor there.

Appellant's father contacted Islamberg; the people there said they would call the people in California to get appellant at the bus station. Appellant's father subsequently received another call, this one from Uthman Aziz, saying that appellant was there and they would try the therapy there.[11] They asked appellant's father to give it 30 days, and he agreed. He telephoned periodically to see how everything was going. Sometime after August 17, he learned appellant had been arrested.

Appellant's father recalled several occasions on which appellant stated that he had hallucinations and was hearing and seeing things. These occurred over quite a period of time, before appellant was ever in jail. Appellant would actively hallucinate in front of his father.

Deborah Tas first met appellant sometime around May 2000, when both worked for TeleSpectrum. As quality manager, she monitored his work and had regular contact with him. Her impression of him was that he was "a fine young man" and "an overall good guy." In addition to a working relationship, she considered him a friend.

In around fall of 2000, Tas started noticing changes in appellant's behavior. Instead of being neat and organized, appellant's clothing and paperwork were disheveled. He did not seem to be the same person he had been earlier. He was doing things that did not make sense, showing up late to work, having some outbursts, and offending coworkers by some of the things he was saying. On one occasion, when the power went out, Tas said, "'Oh, lord Jesus.'" Appellant responded, not jokingly, "'Yes, you called.'"

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[11] Aziz, who had known appellant since the late 1990's, was staying at Baladullah at the time. When he encountered appellant at the bus station, appellant had "like a shadow on his face," like he had a lot on his mind. He was not as talkative as in the past, and did not seem normal. During appellant's time at Baladullah, he was very standoffish, did not seem happy, and was "just somewhere else."

Appellant also started referring to TeleSpectrum as a modern-day Sodom and Gomorrah, as one employee was supposed to be a Wiccan minister and there were also gay employees. Appellant said he destroyed Sodom and Gomorrah once and could do it again. In addition, appellant became socially withdrawn. This coincided with him having personal hygiene issues. He complained to Tas about women becoming pregnant without being married, employees using crude language, and women wearing revealing clothing. He would say the women were putting out an odor and trying to tempt him. He was very offended when TeleSpectrum decided to allow employees to wear a costume to work for Halloween of 2000. He told Tas it was wrong to celebrate an evil holiday. On one occasion, she observed him having a conversation with himself.

In his performance review of June 8, 2001, appellant received a "meets expectations" in each category. On June 29, however, he resigned. He stated that it was for religious reasons, in that there were "'too many witches, warlocks, and homosexuals'" working there.

Beginning in January 2001, Cecilia Salazar, a nurse, was part of the Jail Assessment Team (JAT). The team performed mental health assessments for inmates at the jail who were suicidal, homicidal, or had some other type of disturbing behavior. After appellant's arrest, Salazar saw him regularly, as he was usually housed next to the JAT's office. Other times, he was housed in a camera cell, where he could be watched 24 hours a day for suicide attempts. If he did make a suicidal gesture, he was then moved to the safety cell.

On September 3, 2001, appellant told Salazar that he needed his therapy from "Sheikh the Sultan." He also said that he ran from his people and thought people were coming after him with guns. He thought it was the FBI, so he broke into someone's house and shot a police officer. Appellant said he was chronically ill and needed to get some help. He said he was molested when he was seven years old and was looking at the Internet, and that that was when he started thinking people were after him. He said he

was not the Messiah, but maybe he was, and that he knew Salazar could read his thoughts. He was crying when he spoke to Salazar about shooting the officer. On September 8, he did not respond to questions and seemed internally preoccupied. This can be a sign someone is having delusions. On September 18, he was chanting Islamic songs. He was smiling and said he knew what was going to happen, but he would not explain. He told Salazar that he was a mental patient and would tell the courts so they would not give him the lethal injection. On October 6, 7, and 15, he was in the safety cell.

Dr. Charles Scott was Chief of Psychiatry and the Law at the University of California, Davis, and board certified in forensic psychiatry and other areas in the field. He had specialized training in diagnosing mental illnesses such as schizophrenia, as well as expertise in diagnosing a person's mental state at the time of an offense. He also had specialized experience in the assessment of malingering, which is the intentional exaggeration or feigning of psychiatric symptoms.[12]

Scott explained that a psychotic disorder means the person loses touch with reality and starts to believe in things that are not true. The things may be triggered by the environment, but take on a meaning far greater than what reality proves to be true. One symptom of a psychotic disorder is a delusion. A delusion is a fixed false belief. There are different types of delusions. With paranoid delusions, the person is very suspicious and fearful, and starts to perceive an environment in a hypervigilant, nervous state. With grandiose beliefs, the person may think he or she is Jesus or God or the Pope. A person may also experience distortion of the reality of the world around him or her; for instance, by hearing things that are not there. This is an example of an auditory hallucination.

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12 The Diagnostic and Statistical Manual, Fourth Edition (DSM-IV), which is the psychiatric diagnostic manual, discusses malingering and lists several areas in which it should be considered. One is when a person is involved in, and being charged with, a crime.

Other forms of psychosis may be more subtle. For instance, there may be negative symptoms of psychosis or negative symptoms of schizophrenia, where the person becomes almost mute, barely speaking or barely responsive to the environment, because of the thoughts he or she may be experiencing. The person's thinking may get very slowed or very jumbled.

Scott was asked to conduct a psychiatric evaluation of appellant, and also to evaluate his mental state at the time of the offense. He had over 100 sources of information, including police reports, interviews with family members, and mental health and jail records. In addition, he interviewed appellant for seven and a half hours on January 5, 2008. A forensic examination often takes this long, plus it is harder for someone to malinger in a lengthy examination than it is in a shorter one.

During the examination, appellant was cooperative in the sense that he was pleasant to Scott. In terms of obtaining a psychiatric history, however, it was hard to focus appellant on the topic, because he was so disorganized and psychotic. He had multiple delusions of different types throughout the interview.[13] When Scott would attempt to refocus him, appellant could return to the subject momentarily, but then would start rambling again about unconnected information. Scott did not see him as being voluntarily uncooperative; appellant was trying to tell a story, but his story was disorganized, psychotic, and rambling.

With respect to the present offense, appellant said the tapes would show that people were chasing him down the mountain and he was hanging off the side of the mountain, and that they could see he was not mad at the police. Appellant was able to relate that when he came from New York to the bus station in Visalia or Fresno, he was carrying a backpack that contained a portable sun shower and shoes that are worn in the water, as well as a flashlight. He also said that when he arrived at the bus station, he

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13 Scott detailed many of these delusions for the jury.

called back to New York. He said that while he was in the camp in New York – presumably Islamberg – they gave him a number to the Muslim compound at the top of the mountain, and he recalled them calling Baladullah. Later, he told Scott that he tried to leave, but they would not let him, and someone left his car running, so appellant drove it down the mountain. He had several complaints about Baladullah; he did not feel he had enough to eat, they woke him at sunrise, the plumbing was bad and the shower was outside, and there were "heavy Freud overtones" at the camp. Scott had no idea whether any, or how much, of what appellant related was true.

Appellant told Scott that once he was in the house in which he was arrested, he walked around, grabbed water and pretzels, and sat behind the wood-burning stove. He said he was not sure how long it was before people would come after him, and he grabbed the shotgun in the house and the police showed up. He also talked about the elderly man and the tree house, and how the man told him to leave his property. This was property appellant thought he had been in, in 1998, when he had been drinking Sprite and eating a Snickers bar. Appellant said he remembered that when he got to the house where he was arrested, he tried to lock the door. He looked around and grabbed a knife from a wooden block. He thought the house was his own house, and he did not have his keys on him, so he locked the door when he got in the window. He said he knew "'they'" would come in the back door, so he built a house so he would be protected. Although he did not specifically say whether "'they'" were the people purportedly chasing him from Baladullah or the police, he said that when he was 15, he read his father's handbook about SWAT teams, and that they come in the back door. Appellant said that when he went behind the wood-burning stove, he went to take cover, but he said he did that because an elderly man told him "'[s]hirts on Germany'" and he wanted to lock up his guns from Nebraska. Appellant's hearing a voice saying "'[s]hirts on Germany'" indicated the presence of an auditory hallucination.

Appellant said that after he obtained a gun, he shot so they could know where he was. He thought he was doing something called gun talk. He said the person was wearing a police uniform and appellant thought it was a police officer. Appellant said the officer did not hear him when appellant was banging the gun to get attention. Appellant said that when he did the gun talk, he shot away from him, then he heard a gun go off. It was appellant's belief that he may not have fired the shot that killed the officer. Appellant recalled that after he opened the house door, they told him to get on the ground. He remembered hoping they would not shoot him. He figured they would shoot him, because "they" shot the officer.

Appellant did not volunteer much to Scott about his family's psychiatric history. However, collateral records indicated that a cousin or other family members might have schizophrenia, and that there might be some other severe mental illness in the family. There is an increased incidence of mental illness in family members, particularly with schizophrenia, if there is a family history of that illness. When Scott performed a mini mental status examination on appellant, appellant's score indicated he had some impairment, but not enough for Scott to believe he had a separate brain disorder or some sort of cognitivelike dementia.

Scott considered all of the records between the time of appellant's arrest and Scott's evaluation of him, and looked very carefully at the 30-day period following the arrest, including the tape of appellant's postarrest interrogation and the jail records. Initially in the jail records were notations of observations, such as that appellant was guarded or had a flat affect, that were consistent with negative symptoms of schizophrenia. Within a couple of weeks, appellant was reporting auditory and visual hallucinations of people chasing him. He was also exhibiting other signs of schizophrenia, such as a belief other people could read his thoughts.

In reviewing the various materials, Scott saw evidence that appellant experienced delusions both before and shortly after the offense. Prior to the offense, appellant

claimed on several occasions to be Jesus, son of Mary. The fact this was noted by multiple people over time and in different locations indicated to Scott that it was a persistent belief. After the offense, there was a jail note dated September 13, 2001, in which appellant talked about a curse that was placed on him at TeleSpectrum, and that he believed his collarbone and head were shrinking and he was fearful he would die as a result. This was consistent with a delusional belief.

Based on his interview of appellant and his review of all of the records, and in conjunction with the criteria set out in the DSM, Scott's Axis I diagnosis of appellant was schizophrenia, undifferentiated type.[14] Schizophrenia is one of the severest forms of mental illness. It significantly impairs a person's ability to interpret reality – to accurately perceive what is going on around him or her. With schizophrenia, the person loses touch with reality. Psychosis is a cardinal symptom of schizophrenia. The illness can affect thought, speech, behavior, and attention. In Scott's opinion, appellant "more than met, from the evidence leading up to and around the time of the crime, the diagnosis of schizophrenia."

Based on his review of all the records that were available and his interview with appellant, Scott formed the opinion that appellant met the criteria for schizophrenia, undifferentiated type, on the day of the offense. Appellant had psychotic symptoms noted before the offense, specifically, delusions about being Jesus. He also had a sufficient duration of symptoms leading up to the offense to meet that particular diagnostic criterion for schizophrenia. It was Scott's "strong opinion" that appellant was not feigning his mental illness. Instead, the evidence was "overwhelming" that appellant met the criteria for schizophrenia. Scott did not believe appellant's beliefs were caused

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14 "Undifferentiated" meant appellant did not merely have one basic type of delusion, as would, for example, a paranoid schizophrenic, whose prominent symptom is paranoia. Instead, appellant had other kinds of disorganized speech and behavior, and multiple other types of delusions, in addition to paranoia.

by cannabis-induced intoxication from his marijuana use, as opposed to schizophrenia, because appellant's symptoms existed before the positive blood test, and they also existed in hospital and jail settings and during Scott's interview with him, years later and independent of marijuana use. Scott did not believe appellant met the criteria for an Axis II diagnosis of antisocial personality disorder, because, while appellant may have had some antisocial traits, his behaviors were not really antisocial acts, but instead were related to his mental illness.

In trying to assess what happened on the day of the shooting, Scott relied more on the evidence before, during, and shortly after the crime than on what appellant told him years later. An individual suffering from schizophrenia, particularly with paranoid symptoms, may try to take protective steps out of fear for his or her safety. When a paranoid psychotic believes his or her perceived persecutor is here or he or she is in harm's way, that person may flee and try to avoid. There was evidence in this case of fleeing, both in the context of leaving New York and in leaving Baladullah. The person may take other protective steps, such as barricading him- or herself in a room. A barricade can be created by taking mattresses off the bed and putting them up against the wall, and closing the windows and locking the doors. The more paranoid and fearful the person is, the more he or she will ready him- or herself with weapons, sometimes in an overnecessary kind of state.

Because a schizophrenic's mental illness is misperceiving the environment, such a person may incorporate his or her environment and give significance and meaning to things that other individuals would not. For instance, a paranoid person who was fleeing and believed people were out to harm him or her, and who randomly came upon a house and then heard a helicopter or a police force closing in, might have increased fear and be in a paranoid, psychotic, panicky kind of state. The majority of research shows that when a person is in an active phase of schizophrenia, he or she has an increased risk of violence.

In Scott's opinion, appellant was suffering from a major mental illness on August 21, 2001, specifically schizophrenia, undifferentiated type, characterized by symptoms of paranoia, fear, and disorganized thinking. Delusional thinking was part of that opinion. While Scott believed appellant met the criteria for schizophrenia of six months' duration, it did not matter whether the duration might be slightly shorter so that the diagnosis would be schizophreniform. Both involve psychotic illness. Moreover, schizophreniform can be considered, in the acute sense when it first starts, as carrying a higher risk for violence than schizophrenia.

III

PEOPLE'S REBUTTAL

Dr. Kris Mohandie had a Ph.D. in clinical psychology. Although he had his own consulting business at the time of trial, he was employed in the Los Angeles Police Department's Behavioral Science Unit from 1989 to 2003, during the course of which he was a consultant to the SWAT Crisis Negotiation Team. In that role, he came in contact with people who had an array of mental problems, including those who were acutely delusional because of schizophrenia.

In connection with this case, Mohandie reviewed a substantial amount of material, including witness statements, reports of the officers who took appellant into custody, and interviews. Mohandie also viewed the videotape of the interview of appellant following his arrest. Mohandie saw no indication appellant was responding to auditory or visual hallucinations. There was no evidence he was experiencing paranoia in terms of how he was acting, or in terms of statements that people were out to get him or that he had to protect himself. Generally speaking, he was responsive to the questions that were asked of him, although not as responsive to specific questions about the events that had just occurred. Mohandie's assessment was that appellant was making decisions about what to talk about and what not to talk about. Appellant's affect was somewhat flat and muted, but there was no pressured speech as will sometimes be seen with people who are very

impaired, and appellant was still observant of his religious practices.[15] Mohandie saw nothing in the tape or any of the reports made immediately after the arrest, to lead him to believe appellant was actively delusional or experiencing any sort of hallucinations at that time.

Mohandie met with appellant on three separate occasions in August 2006. Mohandie likes to see people across time, to see if the presentation is consistent. Appellant's was. Prior to these meetings, Mohandie reviewed various materials, including jail records and reports of other professionals who had evaluated appellant. Appellant was "absolutely psychotic" when Mohandie met with him. Even so, he showed some awareness of his actions on the date of August 21, including that he knew the people were sheriff's deputies or police officers, and that he recognized hearing police radios. When he first saw Deputy Telen, he recognized him as wearing a police uniform. Appellant also related that, before surrendering, he put the guns down, because he knew that if he did not have the guns, he would not be shot at. Mohandie conceded it was possible that, from being asked questions and having conversations with his attorneys and others over the years, appellant could have constructed some aspects of his recollection.

Mohandie's Axis I diagnosis of appellant was schizophrenia, undifferentiated type. His Axis II diagnosis was personality disorder, not otherwise specified, meaning appellant had a mixed personality of narcissistic and antisocial features. The diagnosis of schizophrenia, undifferentiated type, was how Mohandie assessed appellant as of 2006, when the evaluation was completed. The diagnosis of personality disorder was the diagnosis that Mohandie made going back to the events of 2001 and that he felt still

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15 At the conclusion of the interview, some sandwiches and fruit were brought over from the jail for appellant. Appellant ate the fruit, but not the sandwiches. He said they were not kosher.

applied. Mohandie's opinion with respect to appellant's mental condition on August 21, 2001, was that appellant had schizophreniform disorder, without good prognostic indicators; his Axis II diagnosis was personality disorder, not otherwise specified, with narcissistic and antisocial features. Schizophreniform displays many of the same symptoms as schizophrenia, but the person has not had it for sufficiently long to qualify for a diagnosis of schizophrenia, and may not have the full level of impairment that a person with full-blown schizophrenia would. Someone suffering from schizophreniform may have delusional thinking that comes and goes. Mohandie believed that was what happened with appellant. When the person becomes sicker, the delusion becomes more fixed and focused.

In looking at whether appellant possessed a mental state that would allow him to premeditate and deliberate on the date of the incident, Mohandie believed it would be important to determine whether he was actively delusional or involved in any hallucinations at the time of the incident. That, of itself, would not be enough; one would also need to look at whether there was a nexus between any delusions and what actually occurred. Mohandie was aware appellant had, on more than one occasion prior to the incident but not consistently, had active delusional thinking in terms of the Jesus, son of Mary comments. With respect to a nexus, however, Mohandie saw no evidence of any type of delusional sort of belief that, for example, appellant was doing something altruistic, on August 21 and 22.

Schizophrenia becomes worse over time, particularly in the beginning, when it may progress from transitory delusions and negative symptoms such as a flat affect, to active symptomology of delusions and hallucinations. Schizophrenia can also exist in different levels or degrees. If appellant had been significantly impaired due to a full-blown schizophrenic condition on August 21 and 22, Mohandie would have expected to have seen evidence of it during the police interview and also during the incident itself. He did not. There was no behavior such as appellant shooting at things that were not

there or looking for protection when he surrendered. If a person is impaired enough to be responding to delusions or hallucinations in a homicidal manner, he or she is not going to be subtly impaired. If appellant had been floridly psychotic in the time period immediately surrounding the incident, there would have been documentation of it, because it would have been obvious to the people who were around him. Instead, documentation of active symptoms began in late August and early September, when, Mohandie believed, appellant's blossoming illness was moving out of the prodromal phase and reaching its full-blown stage.

A command hallucination is an auditory hallucination in which voices tell a person to do something.[16] In Mohandie's review of the record, he saw no evidence appellant was suffering from command hallucinations, or delusions with a violent thought content, at or immediately around the date of the shooting. Moreover, Mohandie found an absence of evidence of paranoia, terror, or panic. He considered that the shooting itself might be evidence of paranoia, but did not see it that way. The shots that were fired were in response to real-world stimuli and were goal-directed in that sense.

If a person armed himself, erected barricades, loaded firearms with appropriate ammunition, took up a position of cover and concealment, and then fired at a time when a target was there, even if there were a command hallucination or delusion, Mohandie would find the behavior strongly indicative of a person who was very much aware of what he was doing and who was engaging in goal-directed, purposeful behavior. In his opinion, "It is effective problem-solving as it relates to committing a homicidal act." Mohandie had seen people who were delusional, yet quite methodical and purposeful. A person can be delusional and yet fully know what he or she is doing and the implications

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16 This does not mean the person does it; some research suggests many people actually resist what they are being told.

of his or her actions. In short, purposeful, goal-directed behavior and delusional thinking are not mutually exclusive.

DISCUSSION

I

Appellant contends the trial court erred by precluding Dr. Scott from opining or implying that appellant experienced delusions on the day of the shooting. Our reading of the trial court's ultimate ruling differs from that of appellant, and we conclude there was no error.

A. Background

The issue of the scope of expert psychological testimony was first raised during jury selection. Mr. Jones, one of appellant's attorneys,[17] stated that he anticipated the defense expert would testify it was likely, at the time of the shooting, that appellant suffered from delusions, was delusional, and was not able to premeditate and deliberate the offense. Relying on cases construing sections 28 and 29, the prosecutor argued that evidence of mental illness could be introduced when relevant to whether a defendant actually formed a mental state that was an element of a charged offense, but that an expert could not offer an opinion on whether a defendant had the mental capacity to form a specific mental state or actually harbored such a mental state. The prosecutor conceded that an expert could explain to the jury, in general terms, the common symptoms of schizophrenia and what might be expected from a schizophrenic person in certain circumstances, as well as the phenomenon of delusional thinking that occurs in people who are schizophrenic, but that offering an opinion as to whether appellant was delusional on the date of the incident was precluded by the statutes. The trial court agreed, stating that experts could testify to the "general outlines" of a mental illness, but

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[17] Appellant was represented by Mr. Jones and Mr. Lambe. At times, we will simply refer to defense counsel without specifying which attorney.

could not give an opinion that on the date of a certain offense, for example, the defendant was hallucinating.

The court also agreed with the prosecutor's argument that details going to the ultimate issue of fact, i.e., whether appellant had the requisite intent or was delusional, were precluded by the statutes, stating, "That's for the trier of fact." Lambe argued that whether appellant was hallucinating or delusional was not the ultimate fact; instead, the ultimate fact was whether he acted with deliberation and premeditation. The prosecutor reiterated his position that the defense could offer psychological evidence regarding appellant being schizophrenic and the delusional aspects of that illness, and that in the expert's opinion he was fully psychotic and subject to suffering delusions and hallucinations at the time of the shooting, but that the expert was precluded by statute from opining, based on statements appellant made later on, that he was in fact suffering from hallucinations or delusions on the date of the incident. When Jones suggested he would tell the jury in opening statement that the circumstances were consistent with someone being delusional, the prosecutor stated he had no objection.

The issue arose again during the defense's direct examination of Cecilia Salazar concerning her notations of her interactions with appellant while she was a nurse at the jail. Defense counsel argued that appellant's mental state went to the heart of the prosecution's first degree murder accusations, and that the expert would be relying on information from both before and after the shooting as the basis for the opinion that what happened on August 21, 2001, was consistent with someone who was delusional at the time. The prosecutor responded that, in the guilt phase of trial, an expert could "testify as to the general symptomology of schizophrenia and what might be expected of a person who is schizophrenic or in the early stages of schizophrenia, and certainly [he] can use this in forming [his] opinion as to that diagnosis that he was schizophrenic, the psychiatric records, the Jail Assessment Team records, all that can be drawn upon, but pursuant to Penal Code Sections 28 and 29 [he is] not allowed to offer an ultimate

conclusion of fact regarding whether Mr. Abdullah was suffering from some hallucination.… [¶] … [¶] Now, [he] cannot offer an ultimate opinion regarding Mr. Abdullah at that time, but [he] certainly can offer an opinion regarding [his] diagnosis and the symptoms associated with that diagnosis."

Defense counsel argued that CALCRIM No. 627 allowed a defendant to attack the mental state for first degree murder on the ground he or she had a mental illness and was delusional or hallucinating at the time.[18] Counsel asserted that under the instruction, the defense was entitled to have an opinion from an expert that at the time of the offense, one reasonable interpretation was that appellant was delusional; to give the basis for that opinion; and to present enough information to support the expert's opinion. The prosecutor reiterated that he had no objection to general psychiatric evidence regarding the symptoms that might be expected from a person like appellant, at his stage in the illness, but argued that the issue of sanity should not be "morph[ed]" into the issue of premeditation and deliberation.

During direct examination, defense counsel asked Dr. Scott whether, in viewing appellant's history, and at the time of his interview of appellant, he saw evidence of hallucinations and/or delusions. Scott discussed the delusions apparent during his interview with appellant. He also discussed evidence he had seen, in reviewing the materials, that appellant experienced delusions both before and after the offense.

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18 CALCRIM No. 627 provides: "A hallucination is a perception not based on objective reality. In other words, a person has a hallucination when that person believes that he or she is seeing or hearing [or otherwise perceiving] something that is not actually present or happening. [¶] You may consider evidence of hallucinations, if any, in deciding whether the defendant acted with deliberation and premeditation. [¶] The People have the burden of proving beyond a reasonable doubt that the defendant acted with deliberation and premeditation. If the People have not met this burden, you must find the defendant not guilty of first degree murder." As ultimately given in appellant's jury trial, the instruction was modified to include delusions.

Scott subsequently testified that, based on his review of all of the records that were available and his interview with appellant, he formed the opinion that appellant met the criteria for schizophrenia, undifferentiated type, on the day of the offense. In explaining how appellant met the criteria, Scott discussed the duration of appellant's symptoms and anticipated the argument that appellant had schizophreniform disorder and not schizophrenia, because his symptoms had not yet lasted six months. This ensued:

> "A [Dr. Scott] … [T]he issue is, did he have a psychotic illness on that date, yes. Now that we have his history over time, has he met the criteria for schizophrenia, yes. He, in my opinion, met criteria for schizophrenia on that day. He has plenty of delusions. They have been several months in duration. Downward functioning –
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> "MR. PETERSON: Objection, Your Honor, move to strike based on Penal Code sections 28 and 29 at this point, as to the last statement. [¶] … [¶] I can tell you what I'm objecting to, and that is, delusions on that date.
>
> "THE COURT: Uh. That part is ordered stricken.… [¶] … [¶] Again, I will admonish the jury not to consider anything that has been stricken by the Court. [¶] … [¶]
>
> "MR. JONES: Q Dr. Scott, based on your assessment of the time leading up to August 21st, 2001, all the other information, evidence you reviewed, … would you say it is consistent with being delusional?
>
> "MR. PETERSON: Same objection.
>
> "THE COURT: Sustained.
>
> "MR. JONES: Q We'll get back to that."

Scott subsequently was permitted to describe what he found significant, from a psychiatric standpoint, in terms of the scene of the shooting. When defense counsel asked whether, generally speaking, someone suffering from a paranoid delusion would be incapable of owning a weapon, finding a place of safety, or doing something that would require basic organized thinking, the prosecutor's objection, based on sections 28 and 29, was overruled. Defense counsel then questioned Scott about what he was able to glean

from the interrogation tape concerning appellant's mental state. In the course of his answer, Scott stated, "[Appellant] also initially is asked, 'Do you know what happened?' Or, 'Do you know – do you know why you are here?' And his first answer is, 'No.' And that may seem kind of surprising considering that he – there has been this hold-out, if you will, there has been people surrounding him for a couple hours. He is now in custody.… But if you are psychotic and you are delusional and you truly believe you are in harm's way and you thought this horrible thing is going to happen –" The prosecutor's objection, that the testimony violated sections 28 and 29, was sustained, and the last portion of the answer was stricken.

The defense subsequently asked for a recess so that the issue involving sections 28 and 29 could be addressed. Outside the jury's presence, defense counsel stated that he wanted "to be able to ask [Scott] an opinion to the effect that based on what he has considered here on this case, if the conduct of Mr. Abdullah is consistent with someone who meets the criteria or was delusional and paranoid. Not that he has a certain mental state, but that could be one interpretation." This ensued:

> "MR. JONES: I guess I would like some direction here as far as what I can and cannot ask.… [S]o far we have on the record that Mr. Abdullah is schizophrenic and he was schizophrenic at the time. We have on the record that he suffered from paranoid delusions and that there were circumstances which could create those paranoid delusions. Is that as far as I can go with Dr. Scott? Or am I allowed to ask him if, one step further, if he has an opinion on whether or not that based on everything he has reviewed and considered, that that is a reasonable interpretation?
>
> "THE COURT: It is consistent, okay. Mr. Peterson [prosecutor]?
>
> "MR. JONES: Consistent. Consistent. [¶] … [¶]
>
> "THE COURT: That was the proposed question. The proposed question was asking the doctor whether from everything he has testified to, everything he has reviewed with the defendant, is that – phrase it again, it is consistent with –

"MR. JONES: That Mr. Abdullah was suffering from paranoid delusions. Apparently [*People v. Young* (1987) 189 Cal.App.3d 891, a case cited by the prosecutor] would support my position, because I'm not asking Dr. Scott the premeditated, deliberated. I'm saying *did he suffer, in your opinion, on that date, at the time of the offense, from paranoid delusions. That is perfectly acceptable then?*

"THE COURT: *It seems like it is to me.*

"THE PROSECUTOR: *Well, I don't disagree with that.* I think he has already offered the opinion that Mr. Abdullah was floridly psychotic, I guess, undifferentiated schizophrenia on the date in question. And he has pointed to a lot of things in the record.… It seems to me that a lot of it has already sort of gone in this direction. However, I think there should be some limitation. I mean, I'm not exactly sure what is being proposed here, but it sounds like it is in violation of Penal Code section 29, in particular.

"I mean, *certainly*, he can offer the hypothetical, or the – or *he can offer or ask for an opinion regarding his mental state, or his psychotic state on this date of August 21, 2001*. But to say whether he was capable, and I'm not sure, consistent with his not being able to premeditate and deliberate, you know, the course of his actions on that date, I think is inappropriate.

"MR. JONES: Well, that is what I was hoping to ask. And I'm limited to asking Dr. Scott's opinion on that date –

"THE COURT: Consistent.

"MR. JONES: *– at the time of the offense, in his opinion, Mr. Abdullah was suffering from paranoid delusions*. Is that –

"MR. PETERSON: *I think there is no problem with that.*

"THE COURT: I think maybe then we thought we had an issue but we don't have?

"MR. JONES: No, I wanted to ask about premeditation and deliberation.

"THE COURT: That is for the jury. That is the ultimate question. That is where I draw the line. You cannot ask that question.

"MR. JONES: Just establish an opinion –

"THE COURT: Sure, it is consistent. It is up to the jury whether it is deliberated, premeditated. [¶] … [¶]

"[DR. SCOTT]: Real quick question.… The one answer that I thought got struck was that he was psychotic or delusional that day, but I think that answer was stricken from the jury, but it sounds like I am now allowed to actually say that. I don't want to get struck again. Am I clear I can say that or not?

"MR. PETERSON: I think you are mistaken. I think actually the Court overruled that objection.

"[DR. SCOTT]: Okay …." (Italics added.)

Back in the jury's presence, the following took place:

"Q [by Mr. Jones] Dr. Scott, in your opinion, was Ramadan Abdullah suffering from a major mental illness on August 21st, 2001?

"A Yes.

"Q And that mental illness was what?

"A Schizophrenia, undifferentiated type, characterized by symptoms of paranoia, fear, and disorganized thinking.

"Q *And is delusional thinking part of that opinion?*

"A *Yes*." (Italics added.)

B. <u>Analysis</u>

From our review of the record, it is apparent that Dr. Scott was indeed correct concerning the striking of his testimony. Nevertheless, it is further apparent that the trial court's ultimate ruling permitted the defense to elicit Scott's opinion concerning whether, at the time of the offense, appellant was suffering from paranoid delusions. That defense counsel chose to ask whether delusional thinking was part of Scott's opinion, rather than directly asking whether, in Scott's opinion, appellant was suffering from paranoid delusions at the time of the offense, does not mean the court's ruling precluded counsel from asking the latter question.

In light of the foregoing, we cannot agree with appellant's claim that the trial court erred by precluding Scott from rendering an opinion that appellant, as a result of his schizophrenia, experienced delusions on the day of the incident. Although the trial court's initial rulings had that effect, its ultimate ruling did not.[19] Moreover, even if we were to conclude the defense was limited to eliciting Scott's opinion that appellant's conduct at the time of the offense was *consistent* with that of someone who was delusional, we would find no error.

Considered together, sections 25,[20] 28,[21] and 29[22] mean that "evidence of mental problems is inadmissible to show that a defendant lacked the capacity to form the requisite mental state, but is admissible to show that the defendant actually lacked the requisite mental state. An expert may testify regarding the defendant's mental condition

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19 Our conclusion that the trial court's final ruling did not preclude such inquiry is supported by the fact the prosecutor questioned both Scott and Mohandie concerning the existence of any evidence appellant was actively delusional at the time of the shooting.

20 Subdivision (a) of section 25 provides in pertinent part: "The defense of diminished capacity is hereby abolished. In a criminal action, … evidence concerning an accused person's … mental illness, disease, or defect shall not be admissible to show or negate capacity to form the particular purpose, intent, motive, malice aforethought, knowledge, or other mental state required for the commission of the crime charged."

21 Subdivision (a) of section 28 provides: "Evidence of mental disease, mental defect, or mental disorder shall not be admitted to show or negate the capacity to form any mental state, including, but not limited to, purpose, intent, knowledge, premeditation, deliberation, or malice aforethought, with which the accused committed the act. Evidence of mental disease, mental defect, or mental disorder is admissible solely on the issue of whether or not the accused actually formed a required specific intent, premeditated, deliberated, or harbored malice aforethought, when a specific intent crime is charged."

22 Section 29 provides: "In the guilt phase of a criminal action, any expert testifying about a defendant's mental illness, mental disorder, or mental defect shall not testify as to whether the defendant had or did not have the required mental states, which include, but are not limited to, purpose, intent, knowledge, or malice aforethought, for the crimes charged. The question as to whether the defendant had or did not have the required mental states shall be decided by the trier of fact."

so long as the expert gives no opinion on the ultimate question of whether or not the defendant actually had the requisite mental state." (*People v. Molina* (1988) 202 Cal.App.3d 1168, 1173, italics omitted, disapproved on another ground in *People v. Saille* (1991) 54 Cal.3d 1103, 1113, 1115-1116; accord, *People v. Coddington* (2000) 23 Cal.4th 529, 582, superseded by statute on another ground as stated in *Verdin v. Superior Court* (2008) 43 Cal.4th 1096, 1107, fn. 4, disapproved on another ground in *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, fn. 13.)

"A delusion is defined as 'something that is falsely or delusively believed or propagated … as … a false conception and persistent belief unconquerable by reason in something that has no evidence in fact [or] a false belief regarding the self or persons or objects outside the self that persists despite the facts.…' [Citation.]" (*People v. Mejia-Lenares* (2006) 135 Cal.App.4th 1437, 1453, fn. 22.) Similarly, "[a] hallucination is a perception with no objective reality. [Citations.]" (*People v. Padilla* (2002) 103 Cal.App.4th 675, 678-679.) Thus, in either instance, the person "is not negligently interpreting actual facts; instead, he or she is out of touch with reality." (*People v. Mejia-Lenares*, *supra*, at p. 1454.)

Appellant says delusion is not an intent or mental state that is an element of any crime charged or special circumstance alleged in this case, nor does a delusion negate any such intent or mental state. Accordingly, his argument runs, nothing in sections 25, 28, or 29 precluded Scott from rendering opinions as to appellant's delusional beliefs on the day of the shooting.

In *People v. Nunn* (1996) 50 Cal.App.4th 1357, the appellate court held that "section 29 does not simply forbid the use of certain words, it prohibits an expert from offering an opinion on the ultimate question of whether the defendant had or did not have a particular mental state at the time he acted. An expert may not evade the restrictions of section 29 by couching an opinion in words which are or would be taken as synonyms for the mental states involved. Nor may an expert evade section 29 by offering the opinion

that the defendant at the time he acted had a state of mind which is the opposite of, and *necessarily* negates, the existence of the required mental state." (*People v. Nunn*, *supra*, at p. 1364, italics added; see also *People v. Bordelon* (2008) 162 Cal.App.4th 1311, 1327 [hypothetical question cannot be used to do indirectly what cannot be done directly under statute].)

In *People v. Padilla*, *supra*, 103 Cal.App.4th at page 679, this court determined that a hallucination can negate deliberation and premeditation, and so reduce first degree murder to second degree murder. By logical extension, a delusion can also negate premeditation and deliberation. A delusion does not *necessarily* do so, however; as this court has also observed, "[W]hile one who acts on a delusion may argue that he or she did not realize he or she was acting unlawfully as a result of the delusion, he or she may not take a delusional perception and treat it as if it were true for purposes of assessing wrongful intent.… [¶] To hold otherwise would undercut the legislative provisions separating guilt from insanity." (*People v. Mejia-Lenares*, *supra*, 135 Cal.App.4th at p. 1456.)

Because a delusion does not necessarily negate intent or premeditation, expert testimony that a defendant was delusional does not automatically run afoul of the holding of *People v. Nunn*, *supra*, 50 Cal.App.4th at page 1364. This is so because such testimony is not necessarily synonymous with lack of intent or lack of premeditation and deliberation. Depending on the circumstances of the particular case, then, such testimony may be permissible. (See, e.g., *People v. San Nicolas* (2004) 34 Cal.4th 614, 662-663 [trial court did not abuse discretion by (1) admitting expert testimony concerning spillover concept in abstract and how it might relate to defendant's conduct on day of murders, but (2) excluding expert testimony on spillover rage that related to whether defendant actually had requisite mental state]; *People v. Bordelon*, *supra*, 162 Cal.App.4th at pp. 1326-1328 [defense counsel was properly precluded from eliciting expert's opinion concerning defendant's specific intent or mental state through

hypothetical question based on facts of case, but hypothetical question concerning motive of someone in defendant's position would have been permissible under § 29]; *People v. Jackson* (1984) 152 Cal.App.3d 961, 968, 969 [defense psychiatrists testified that on day of stabbing, defendant's action was result of mental disease and psychotic compulsion, but could not specifically testify that defendant did not premeditate or have malice aforethought].)

Precisely because delusion is not conclusive on the issue, however, we perceive no significant difference, in terms of establishing or negating a required mental state, between expert opinion that a defendant *was in fact delusional* at the time of the charged offenses, and expert opinion that a defendant's behavior, background, and mental state were *consistent with him or her being delusional* at the time of the offenses. Such testimony neither violates the pertinent statutes nor is unduly restrictive. (See, e.g., *People v. Coddington, supra,* 23 Cal.4th at pp. 582-583 [expert's opinion that a form of mental illness *can* lead to impulsive behavior is relevant to existence of mental states of premeditation and deliberation, and so is admissible under §§ 28 & 29]; *People v. Bordelon, supra,* 162 Cal.App.4th at p. 1328 [in response to hypothetical question concerning motive, expert presumably would have testified that defendant's behavior was *consistent* with someone with "'institutionalization'" who wanted to be returned to prison; it would remain for jury to draw inference that, because he wanted to get back to prison, defendant did not have specific intent required for robbery, the charged crime]; *People v. Nunn, supra,* 50 Cal.App.4th at p. 1365 [expert could permissibly opine that defendant, because of history of psychological trauma, tended to overreact to stress and apprehension, that such condition *could* result in defendant acting impulsively under particular circumstances, and that encounter shown by evidence in case was type that *could* result in impulsive reaction from one with defendant's mental condition; expert could not conclude defendant *did act* impulsively, viz., without intent to kill (express malice aforethought)].)

A trial court's decision to admit expert testimony, even under sections 25, 28, and 29, is reviewed for abuse of discretion. (*People v. San Nicolas*, *supra*, 34 Cal.4th at p. 663; *People v. Bordelon*, *supra*, 162 Cal.App.4th at p. 1327.) Appellant has established no such abuse here.

II

Appellant next contends the trial court erred by setting an arbitrary cutoff of a month after the date of the shooting, with respect to records and evidence on which Dr. Scott could rely in rendering his opinions. Our reading of the record shows that the trial court did not limit the materials on which Scott could *rely*, but only those that could be delineated in his testimony. Under the circumstances of this case, we find no error.

A. Background

By the time of trial, appellant had been in custody for years, and in that time, voluminous jail and other mental health records were compiled. Prior to his opening statement, defense counsel noted that the prosecutor wanted to limit the focus of any psychological testimony to several weeks around the time of the incident. Defense counsel said he could do that.

Defense counsel questioned Cecilia Salazar, the jail nurse, about notes she had written concerning her interactions with appellant. When counsel inquired about a note dated October 15, 2001, the prosecutor objected on grounds of relevancy and Evidence Code section 352. The trial court sustained the objection.

Outside the presence of the jury, Lambe explained that, while Salazar had testified concerning some of appellant's hallucinations and delusions, other of her notes reflected less severe mental difficulties; hence, the defense was attempting to present a balanced portrait of what she observed so that the jury had a full picture, and so that there was no risk the defense's credibility would be damaged by only bringing out the worst parts and having the prosecution bring out the less severe aspects of appellant's behavior. The prosecutor argued that the testimony was getting far from the date of the incident, which

was the focus of the jury's consideration. He noted that many hundreds of pages of records had been generated with respect to appellant, and argued that there had to be some limitation, with a determination under Evidence Code section 352 as to what was time-consuming and what was probative in the context of the guilt phase of trial. Jones responded that the expert relied heavily on all of appellant's records and formed his opinions based on everything he read and considered, and Jones needed to go over all of the material with the expert in order to be able effectively to present an opinion that appellant's conduct on August 21 was consistent with someone suffering from schizophrenia and delusions. Jones conceded, however, that Scott, and probably the other experts, felt that things that were said later on were not really reliable, because they were totally delusional. As a result, the most reliable time period to look at was as close to the offense as possible. Jones expressed concern that the parties could use portions of statements made later on to attack the opinions of each other's experts, but he stated that if required to contain the doctor to the JAT records and documents immediately surrounding the incident, the defense could attempt to do that.

The prosecutor asserted that the experts could use the entire mental health record generated in this case as the basis on which to form their opinions, but that testimony from other witnesses regarding any delusions or hallucinations that may have existed should be limited to 30 days before and after the date of the shooting. When Jones pointed out that under the DSM-IV, a longer period was needed to establish the mental illness, the prosecutor agreed that events leading up to, and any symptomology that was present before, August 21, 2001, was unobjectionable, even if it was beyond 30 days. He did believe, however, that JAT records and other psychological documents generated for years since the shooting were time-consuming and of little probative value with respect to the specific issues before the court. The trial court agreed, stating: "I think the history's important and I don't know how much more history you intend to put on the record. You do have other witnesses who will be testifying post the date of August 21st. I think there

should be a time frame that we stick to. Beyond that, I think we're probably just wasting time, and I don't think any expert is going to not consider it relevant nor do I think it is relevant to a decision. So I'm going to limit you to 30 days post August 21st."

During direct examination, Scott was asked whether, in reviewing the materials, he saw any evidence that appellant experienced delusions prior to the offense and "within a certain period of time" after the offense. Scott answered yes to both questions and proceeded to relate that evidence. When he referred to a jail note dated September 13, 2001, and then said that there were years' worth of substantial false beliefs from that point onward, including that appellant had married Dominique Dawes, the gymnast, the prosecutor objected. Scott then asked for clarification. Outside the jury's presence, he explained that appellant had personally told him about Dawes, and that he had to look at appellant's life history to make a diagnosis. The court then inquired whether it was important to Scott to be able to discuss things beyond the limit of 30 days post-incident, aside from his interview with appellant. Scott responded that having sustained observation over time and looking at the records to see if someone really did have a psychiatric diagnosis that persisted versus something that only lasted for 30 days was very important for making a diagnosis and ensuring the patient was not malingering. It was also important in differentiating schizophrenia from drug-induced psychosis. Scott concluded: "So that 30-day cutoff, you know, the fact that he had such sustained symptoms over time really does support he has a legitimate mental illness versus faking or versus using drugs. [¶] So to that extent it is helpful for making a psychiatric diagnosis. I mean, I think it is critical."

The prosecutor noted that appellant had been diagnosed as schizophrenic by a number of experts, and represented that malingering was not an issue. He asserted that the doctor could offer an opinion regarding appellant's psychosis and could state his basis for that opinion, and he had no objection to Scott offering an opinion based on his interviews and the statements made to him by appellant. He believed, however, that the

30-day cutoff was fair with respect to statements regarding delusions and hallucinations from other sources such as jail personnel.

When the trial court expressed concern that the 30-day limitation might be unfair and artificial, Scott noted that in his report, he stated that he gave more weight to statements made about appellant's mental state at the time of, and closer to, the offense. A psychiatric diagnosis is made over time, however. Thus, as Scott viewed it, there were two issues: information to fairly and credibly support psychiatric diagnoses, and mental state at the time of the offense.

Jones expressed the concern that appellant had said some things after the offense that were consistent with certain pieces of circumstantial evidence. For example, on several occasions, he talked about the helicopters. In Jones's view, if the helicopters were something that could trigger or exacerbate appellant's mental problems, then Scott should be able to comment. The prosecutor disagreed, arguing that the presence of the helicopter on the date of the shooting was a fact, not a delusion. When Scott was asked whether something such as hearing helicopters was important in considering all the evidence surrounding the time of the offense, he replied that it could be, because, while it was not a hallucination or delusion, one of the things to be considered was how a mentally ill person perceived the environment around him or her. If someone is paranoid, his or her symptoms may worsen based on true, legitimate stimuli. A jail note of November 10, 2001, reflected that appellant talked about helicopters in relationship to the offense. The prosecutor responded that Scott could give that same explanation without making any reference to a statement appellant made beyond the 30-day period. He clarified that he had no objection to Scott stating that he was basing his opinion and diagnosis on his review of the entire record, but instead was simply objecting to any specific references from collateral sources being put before the jury in connection with that opinion if they were made beyond 30 days after the shooting.

The court ruled:

> "THE COURT: I'm going to stay with the 30-day limitation on collateral source evidence. You may refer to it but [obliquely].[23] *The jury may know that the doctor read all those records, and the records go from whatever date to whatever date they ended. So they will know that these are things that he relied upon with no specific reference to an item in the record*. Okay? [¶] … [¶]
>
> "THE WITNESS: Just so I'm respectful of the Court's order, if it is something that he told me in my psychiatric evaluation, and I'm getting that information from that interchange but not the collateral record past 30 days, am I allowed to mention that?
>
> "THE COURT: The answer to that question, Doctor, is yes." (Italics added.)

In the jury's presence, Jones elicited that Scott had read all of the records between the time of appellant's arrest and the time of Scott's evaluation, and that he had looked at the interrogation tape and the jail records that included the 30-day period following the arrest. Jones then had Scott go through those jail records. Jones then asked whether, based on his interview with appellant and his review of *all* of the records, Scott had formed a diagnostic opinion. Scott replied that he had, and stated his diagnosis. Jones subsequently asked whether, based on his interview with appellant and his review of *all* of the records that were available, Scott was able to form an opinion regarding appellant's Axis I disorder at the time of the offense. Scott replied that he was, and gave his opinion. When Jones subsequently asked Scott what appellant told him about his experience once he got to California, Scott explained that it was important to know that some of the accounts from years later could incorporate beliefs and information that were part of the illness as it grew over time. Thus, Scott did not see, in appellant's earlier statements, some of the things that appellant told him. This did not mean appellant had

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23 The reporter's transcript uses the word "bleakly."

inconsistent stories or was faking, however, but instead was consistent with how schizophrenia progresses over time. When Jones asked whether Scott relied heavily on what appellant told him in trying to assess what happened on August 21, 2001, Scott responded that he relied more on the evidence before, during, and shortly after the crime.

B. Analysis

Evidence Code section 352 provides: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." "[T]he trial court enjoys broad discretion in assessing whether the probative value of particular evidence is outweighed by concerns of undue prejudice, confusion or consumption of time. [Citation.] Where, as here, a discretionary power is statutorily vested in the trial court, its exercise of that discretion 'must not be disturbed on appeal *except* on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice. [Citations.]' [Citation.]" (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124-1125.) The trial court's discretion is not unlimited, however, "especially when its exercise hampers the ability of the defense to present evidence." (*People v. Cooper* (1991) 53 Cal.3d 771, 816.)

We find nothing arbitrary, capricious, or absurd in the trial court's imposition of a 30-day cutoff with respect to specific references to, and testimony about, collateral sources. It is apparent that this amount of time was chosen as being the most probative with respect to appellant's state of mind at the time of the shooting, which was the issue before the jury in the guilt phase of trial, and that it resulted from an implicit weighing of probative value against undue consumption of time.

Evidence Code section 801, subdivision (b) requires an expert's opinion to be "[b]ased on matter …, whether or not admissible, that is of a type that reasonably may be

relied upon by an expert in forming an opinion upon the subject to which his testimony relates, unless an expert is precluded by law from using such matter as a basis for his opinion." Here, Scott was not constrained from relying on *all* of appellant's records and other information, but was merely precluded from reciting years of jail staff and other observations of, and statements by, appellant to the jury. Significantly, jurors were made aware that he relied on all of the records.

Appellant points to Evidence Code section 802, which states in pertinent part: "A witness testifying in the form of an opinion may state on direct examination the reasons for his opinion and the matter … upon which it is based, unless he is precluded by law from using such reasons or matter as a basis for his opinion." This does not mean, however, that a trial court may not impose limits, under Evidence Code section 352, on the expert's statement of reasons. (See *People v. Catlin* (2001) 26 Cal.4th 81, 137.) Indeed, the California Supreme Court has "observed that '"[w]here expert opinion evidence is offered, much must be left to the discretion of the trial court." [Citation.]' [Citation.]" (*People v. Nicolaus* (1991) 54 Cal.3d 551, 582.) No abuse of discretion is shown here; Scott *did* state the matter on which his opinion was based: all of the records. He himself testified that he relied most heavily on those close in time to the offense, and he was allowed specifically to refer to those records in his testimony. There was no suggestion he needed explicitly to state anything beyond the 30-day period in order to give, or support, his opinion, especially in light of the fact the prosecution did not seek to impeach that opinion with any collateral source materials outside the 30-day period.

In light of the foregoing, the trial court's imposition of a 30-day cutoff was reasonable under the circumstances. Moreover, it in no way impermissibly or unfairly impinged upon or hampered the ability of the defense to present evidence. There was no error.

III

Appellant separately contends that the trial court's rulings, discussed *ante*, violated his rights, under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, to present relevant exculpatory evidence and to defend against the state's accusations. He says this is so even assuming the rulings were correct under California law. As previously discussed, we found no error in the trial court's rulings under state law. We similarly find no federal constitutional error.[24]

"Application of the ordinary rules of evidence, as the trial court did here, does not impermissibly infringe on a defendant's right to present a defense. [Citation.]" (*People v. Mincey* (1992) 2 Cal.4th 408, 440.) "Courts retain … a traditional and intrinsic power to exercise discretion to control the admission of evidence in the interests of orderly procedure and the avoidance of prejudice. [Citations.]" (*People v. Hall* (1986) 41 Cal.3d 826, 834; accord, *People v. Lawley* (2002) 27 Cal.4th 102, 155.)

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[24] Citing *People v. Clark* (1990) 50 Cal.3d 583, respondent contends appellant forfeited his claim by not objecting to the trial court's previous rulings before submitting to the court trial. As appellant observes, *Clark* involved the admission of evidence in the retrial of a penalty phase before a second jury after the first jury deadlocked, and not, as here, submission of the matter on the transcript of the first trial. (*Id*. at pp. 593-594.) The California Supreme Court held that, absent a ruling or stipulation that objections and rulings would be deemed renewed and made in a later trial, the failure to object at that later trial barred consideration of the issue on appeal, because (1) a party might elect different tactics at a second trial, and (2) the trial court, being more fully informed, must be given an opportunity to reconsider the prior ruling. (*Id*. at pp. 623-624; see also Evid. Code, § 353, subd. (a).) In appellant's case, there was no issue of different trial tactics; the matter was fully submitted on the transcript of the first trial. Moreover, defense counsel stated, without contradiction from the prosecutor, that "it would be a guilt phase case *with the guilt issues that were presented before*…." (Italics added.) In our view, this is tantamount to an implied stipulation that objections and rulings would be deemed renewed and made in the court trial. Accordingly, we conclude the claim has been preserved.

We recognize that state evidentiary rules "must yield to a defendant's due process right to a fair trial and to the right to present all relevant evidence of *significant* probative value to his or her defense." (*People v. Cunningham* (2001) 25 Cal.4th 926, 999; see, e.g., *Rock v. Arkansas* (1987) 483 U.S. 44, 55-57 [although right to permit relevant testimony is not without limitation, state may not apply rule of evidence that permits witness to take stand, but arbitrarily excludes material portions of testimony; state's per se rule prohibiting admission of any defendant's hypnotically refreshed testimony violated defendant's constitutional rights]; *Crane v. Kentucky* (1986) 476 U.S. 683, 690-691 [absent valid state justification, state cannot exclude competent, reliable exculpatory evidence where such evidence is central to defendant's claim of innocence]; *Chambers v. Mississippi* (1973) 410 U.S. 284, 302-303 [while respect is traditionally accorded to states in establishment and implementation of criminal trial rules and procedures, and while accused must comply with established rules of procedure and evidence designed to assure fairness and reliability in ascertainment of guilt, state hearsay rule could not be applied mechanistically so as to defeat ends of justice by precluding testimony bearing persuasive assurances of trustworthiness and that was critical to defense]; *Washington v. Texas* (1967) 388 U.S. 14, 23 [state cannot arbitrarily deny defendant the right to present witness who was physically and mentally capable of testifying to events he personally observed, and whose testimony would have been relevant and material to defense, merely because witness was alleged accomplice].) Nevertheless, although "completely excluding evidence of an accused's defense theoretically could rise to" a level of federal constitutional error, "excluding defense evidence on a minor or subsidiary point does not impair an accused's due process right to present a defense. [Citation.]" (*People v. Fudge* (1994) 7 Cal.4th 1075, 1103; see, e.g., *Taylor v. Illinois* (1988) 484 U.S. 400, 410 [under Sixth Amendment, accused does not have unfettered right to present testimony that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence];

Delaware v. Van Arsdall (1986) 475 U.S. 673, 679 [trial courts retain wide latitude, under confrontation clause, to impose reasonable limits on cross-examination, but constitutional error occurred when trial judge prohibited all inquiry into potential bias of prosecution witness]; *Davis v. Alaska* (1974) 415 U.S. 308, 316 [under confrontation clause, trial court retains broad discretion to preclude repetitive and unduly harassing cross-examination].)

Here, appellant clearly was not precluded from presenting his defense. That the trial court exercised its discretionary power to exclude some evidence does not mean there was any constitutional infirmity in its rulings, as they were neither arbitrary nor constituted anything close to a blanket exclusion of any given subject. (See *People v. Hart* (1999) 20 Cal.4th 546, 607 [no constitutional violation where trial court merely exercised discretion to preclude examination on collateral matters].)[25]

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25 We note that the limitations on expert testimony contained in sections 28 and 29 have uniformly been held not to violate a defendant's federal constitutional rights. (*People v. Coddington, supra,* 23 Cal.4th at p. 583; *People v. Nunn, supra,* 50 Cal.App.4th at p. 1363; *People v. Young, supra,* 189 Cal.App.3d at p. 905; *People v. McCowan* (1986) 182 Cal.App.3d 1, 14-15; *People v. Whitler* (1985) 171 Cal.App.3d 337, 340-341; *People v. Lynn* (1984) 159 Cal.App.3d 715, 732-733; *People v. Jackson, supra,* 152 Cal.App.3d at pp. 967-969.)

Almost in passing, appellant submits that California trial courts in general, and his trial court as well, have not applied section 352 evenhandedly, thus resulting in a constitutional violation. We are not concerned with rulings of California trial courts in general, but only of appellant's trial court. Appellant's claim in this regard is essentially one of judicial bias, which appellant forfeited by failing to assert it in the trial court. (*People v. Farley* (2009) 46 Cal.4th 1053, 1110.) Moreover, appellant provides no citations to the record supporting his assertion, and our review of the record reveals no suggestion of inconsistent rulings or rulings that were partial to either side. Appellant's claim is without merit. (*People v. Alcala* (1992) 4 Cal.4th 742, 798.)

DISPOSITION

The judgment is affirmed.

_____
Ardaiz, P.J.

WE CONCUR:

_____
Levy, J.

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Gomes, J.